IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.12.2006

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA
AND
THE HONOURABLE MR. JUSTICE S. RAJESWARAN

H.C.P.NO.871 OF 2006

Vijayakumar @ CTN Vijayakumar,
S/o/ Kandasamy .. Petitioner

Vs.

1. The State Government,
   Rep. by the Secretary to Government,
   Prohibition and Excise Department,
   Fort St. George, Chennai 600 009.

2. The Commissioner of Police,
   Salem City, Salem. .. Respondents

For Petitioner : Mr.S. Pushpakaran

For Respondents : Mr.M. Babu Muthu Meeran
Addl. Public Prosecutor

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Petition filed under Article 226 of the constitution of India for the issuance of writ of Habeas Corpus calling for the records of the detention order dated 12.7.2006 passed in proceedings CMP No.14/Goonda/Salem/2006 by the second respondent herein and quash the same and to produce the petitioner viz.Vijayaklumar @ CTN Vijayakumar now confined at Central Prison,Salem before this Hon'ble High Court and set him at liberty.

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O R D E R

(Order of the Court was made by P.K. MISRA, J)

The petitioner has filed the Habeas Corpus Petition challenging the order of detention dated 12.7.2006 passed by the Commissioner of Police, Salem. The order of detention has been passed

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on the ground that the petitioner/detenu is a "Goonda" within the meaning of Tamilnadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14/1982).

2. In the grounds of detention reference has been made to one adverse case, namely, Salem Town Police Station Cr.No.1049 of 2006, which is registered under Sections 364-A, 386, 307, 120-B IPC. Apart from the above adverse case, the detaining authority has referred to the incident dated 18.6.2006, on the basis of which Salem Town Police Station Crime No.1081 of 2006 under Sections 392 & 397 IPC. In the grounds of detention, the detaining authority has referred to the fact that the detenu has been remanded to judicial custody in Salem Police Station Cr.No.1081 of 2006 and, even though no bail application had been filed, there was possibility of being released on bail by filing bail application in future.

3. In the above background, the contention raised by the learned counsel for the petitioner to the effect that even though the detaining authority has referred to the possibility of the detenu being released on bail in the ground case, which was registered under Sections 392 & 397 IPC., the order of detention does not reflect the subjective satisfaction of the detaining authority regarding the possibility of the detenu being released on bail in Cr.No.1049 of 2006, wherein it is alleged that the detenu has committed offences under Sections 364-A, 386, 307 & 120-B IPC. It is thus submitted that in the absence of any such subjective satisfaction relating to possibility of the detenu being released on bail in the adverse case, where the offence under Section 364-A is more serious, even punishable with death, the order of the detention must be taken to be vitiated.
Learned counsel for the petitioner has placed reliance upon several decisions of this Court.

4. It appears that in connection with very same adverse case and ground case, the order of detention has been passed in respect of a co-accused, namely, Vijayakumar @ Kallakurichi Vijayakumar, and the Habeas Corpus Petition No.841 of 2006 filed by the detenu has been allowed on 21.11.2006 and the order of detention has been quashed on the said ground. The ratio of the said decision is also applicable to the present case. Accordingly the order of detention is liable to be quashed.

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5. For the aforesaid reason, the Habeas Corpus Petition is allowed and the order of detention is set aside and the detenu is directed to be set at liberty forthwith from the custody unless he is required in connection with any other case.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

dpk

To

1.The Secretary to Government,
Prohibition and Excise Department,
Fort St. George, Chennai 600 009.

2. The Commissioner of Police,
Salem City, Salem.

3.The Joint Secretary to Government,
Public (Law and Order) Fort St. George,
Chennai-9.

4. The Superintendent,
Central Prison, Salem.

5. The Public Prosecutor,
High Court, Madras

+1cc to Mr.S.Pushpakaran, Advocate Sr 60233

SSV (CO)
km/8.1.

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